

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF WASHINGTON  
AT TACOMA

HENRY HEINIG,

Petitioner,

v.

PAT GLEBE,

Respondent.

Case No. C10-5365BHS/JRC

ORDER DENYING  
PETITIONER'S MOTION  
TO STAY THIS PETITION  
AND HOLD THE  
PETITION IN ABEYANCE

The underlying petition for a writ of habeas corpus has been referred to United States Magistrate Judge J. Richard Creatura pursuant to 28 U.S.C. § 636(b)(1)(A) and(B), and Local Magistrate Judge's Rule MJR3 and MJR4. The petitioner in this action is seeking a habeas corpus relief pursuant to 28 U.S.C. § 2254 from a state conviction.

Petitioner's issues cannot be exhausted because they are procedurally barred in state court. Therefore, petitioner's motion to stay the petition and hold it in abeyance is DENIED.

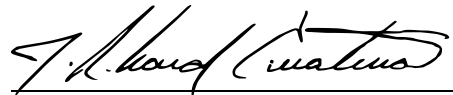
Respondent has filed an answer and contends, among other things, that two issues in the petition were not exhausted and are now procedurally barred. (ECF No. 9). Petitioner has filed a motion asking the court to stay the petition and hold it in abeyance while he attempts to exhaust his claims in state court (ECF No. 14).

1 State law prevents petitioner from re-raising issues that were raised and ruled on in his  
2 direct appeal in a personal restraint petition. In re Stenson, 142 Wn.2d 710, 719 (2001); In re  
3 Gentry, 137 Wn.2d 378, 388 (1999); In re Lord, 123 Wn.2d 296, 303 (1994). Therefore,  
4 petitioner cannot go back now and recast the issues that were in his direct appeal as federal  
5 claims in a personal restraint petition.  
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7 Although a district court has discretion to stay a petition and hold it in abeyance while the  
8 petitioner returns to state court if the petitioner shows good cause and the petition is a mixed  
9 petition, Rhines v. Weber, 544 U.S. 269 (2005), here, the claims are procedurally barred and  
10 petitioner cannot return to state court. Thus, petitioner cannot show good cause to stay the  
11 petition and hold it in abeyance.

12 The Clerk is directed to mail a copy of this Order to petitioner.

13 Dated this 22nd day of November, 2010.  
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16 J. Richard Creatura  
17 United States Magistrate Judge  
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